

The Administrative Law Judge found claimant entitled to permanent partial general disability benefits based upon a five percent (5%) functional impairment rating. The

respondent and insurance carrier request the Appeals Board to review that finding because they contend claimant has failed to prove that he sustained personal injury by accident arising out of and in the course of his employment with respondent. Claimant requests the Appeals Board to review the finding of nature and extent of disability. Those are the issues now before the Appeals Board.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

The Appeals Board affirms the Award of the Administrative Law Judge.

(1) Claimant bears the burden of proof to establish his claim. "Burden of proof" is defined in K.S.A. 1992 Supp. 44-508(g) as ". . . the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record." The burden of proof is:

" . . . on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record." K.S.A. 1992 Supp. 44-501(a).

In order to recover, claimants must establish that the claimant sustained an accident and injury arising out of the employment and in the course of his employment. These are separate elements which must be proven in order for the claim to be compensable. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973). In order to establish that the incident "arose out of the employment," the claimant must show that there is some causal connection between the accident, injury and the employment. To do this, it must be shown that the injury arose out of the nature, conditions, obligations and incidents of the employment. Only risks associated with the work place are compensable. "In the course of the employment," relates to the time, place and circumstances under which the accident occurred, and that the injury happened while the employee was at work at his or her employer's service. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 197, 689 P.2d 837 (1984).

The Appeals Board finds claimant has established it is more probably true than not he sustained personal injury by accident arising out of and in the course of his employment with the respondent as alleged. Due to the nature of claimant's work, he sustained injury to his neck that has aggravated a preexisting condition of cervical spondylosis. The condition of spondylosis was diagnosed by Revis C. Lewis, M.D., the doctor selected by the Administrative Law Judge for an independent medical examination.

The Appeals Board adopts the finding of the Administrative Law Judge that claimant has sustained functional impairment of five percent (5%) to the body as a whole as it falls within the reasonable range of impairment. The Administrative Law Judge considered Dr. Lewis' report which indicates claimant's impairment rating falls between three and five percent (3-5%), plus, perhaps, an additional three percent (3%) depending upon the severity of changes as indicated by EMG. The Administrative Law Judge also considered the testimony of claimant's physician P. Brent Koprivica, M.D., who testified claimant has

sustained a twelve percent (12%) functional impairment as a result of his work-related injuries.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Robert H. Foerschler dated July 27, 1994, should be, and hereby is, affirmed.

**AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Charles A. Williams, and against the respondent, Jack Cooper Transport Company, Inc., and its insurance carrier, Liberty Mutual Insurance Company, for an accidental injury which occurred December 14, 1992 and based upon an average weekly wage of \$786.90, for 415 weeks at the rate of \$26.23 per week or \$10,885.45 for a 5% permanent partial general body impairment of function.

As of May 10, 1995, there is due and owing claimant 125.29 weeks of permanent partial disability compensation at the rate of \$26.23 per week in the sum of \$3,286.36 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$7,599.09 is to be paid for 289.71 weeks at the rate of \$26.23 per week, until fully paid or further order of the Director.

Future medical treatment may be awarded upon proper application to the Director.

Claimant is entitled reimbursement of \$250.00 for the deductible medical insurance expense he expended for medical treatment. Claimant is also entitled an award for the medical treatment he obtained for treatment of this injury.

Unauthorized medical expense pursuant to K.S.A. 1992 Supp. 44-510(c) in the amount of \$350.00 is also awarded to the claimant.

Pursuant to K.S.A. 1992 Supp. 44-536, the claimant's contract of employment with his counsel is hereby approved.

Costs of transcripts in the record are taxed against respondent and carrier as follows:

Metropolitan Court Reporters, Inc.	\$227.60
Rebecca J. Ramsay, RPR	\$106.60
Gene Dolginoff Associates, Ltd.	\$357.50

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Robert W. Harris, Kansas City, Kansas  
Stephanie Warmund, Overland Park, Kansas  
Robert H. Foerschler, Administrative Law Judge  
George Gomez, Director